

MM 97-628

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

MAY 30 1984

In re Applications of)

FAITH CENTER, Inc.)
Hartford, Connecticut)

For Renewal of License of)
Station WHCT-TV, Hartford,)
Connecticut)

SHURBERG BROADCASTING OF HARTFORD, INC.)
Hartford, Connecticut)

For Construction Permit for a New)
Commercial Television Station to)
Operate with the Facilities of)
Station WHCT-TV)

FCC
File No. BRCT-348 Office of the Secretary

File No. ARN-831202

TO: The Commission

OPPOSITION TO PETITION FOR EXTRAORDINARY RELIEF

Introduction

The Department of Communications of the Capital Region Conference of Churches and the Communications Management Team of the Christian Conference of Connecticut and Sherman G. Tarr, ^{1/} (Churches), through their attorneys, the Media Access Project, hereby respectfully request that the Commission deny the Petition for Extraordinary Relief (Petition) filed by Shurberg Broadcasting of Hartford, Inc. (SBH) in connection with the license renewal of station WHCT-TV, Hartford, Connecticut.

^{1/} The original parties to the Petition to Intervene included Father Edmund S. Nadolny, Father Don Augusta, Father James Demetriades, the Reverend Joseph Zezzo, and the Reverend Mark Welch in addition to the parties named above. Father Edmund S. Nadolny no longer resides in the Hartford, Connecticut area. Each of the other parties still maintains an interest in this proceeding. However, for purposes of administrative convenience, only the names of the three parties identified above have been placed on this pleading. All the parties continue to represent the broad set of interests identified in the Petition to Deny Assignment Application filed June 13, 1980.

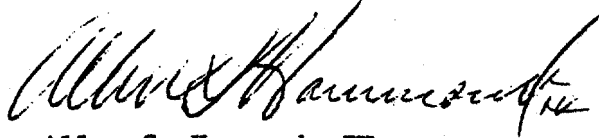
For the reasons set forth below, Churches maintains that regardless of whether Faith Center, Inc. (Faith) is unfit to remain licensee of WHCT-TV, and, regardless of whether the Commission's decision to allow Faith to elect to dispose of WHCT-TV via distress sale was, or is in the public interest, SBH is not entitled to the relief it seeks as a matter of procedure or law.

First, the Commission's rules make no provision for the "Extraordinary Relief" which SBH requests. Second, the issue of whether Faith's continued operation of WHCT-TV will serve the public interest is admittedly important, but it is a matter properly addressed in the context of Faith Center's renewal hearings; consideration before the full Commission is inappropriate and redundant at this time. Third, the alleged issue of whether Faith is entitled to dispose of WHCT-TV via distress sale has already been adjudicated. The Commission has held (over Churches' objection), and it is the law of this case, that Faith's application for renewal of WHCT-TV qualifies procedurally for distress sale treatment. See Faith Center, Inc., 83 FCC 2d 401n.1, 403n.4, released December 1, 1980; re con. denied, 86 FCC 2d. 891 (1981). Whether current conditions justify the denial of Faith's distress sale option based upon recent events, equitable considerations and the overall interests of the public are therefore a matter committed to the discretion of the Administrative Law Judge (ALJ). Finally, even if the rules allowed the filing of the Petition, and the issues identified above were not before the ALJ, SBH cannot properly claim to be a competing applicant for Channel 18 under existing Commission law and policy.^{2/}

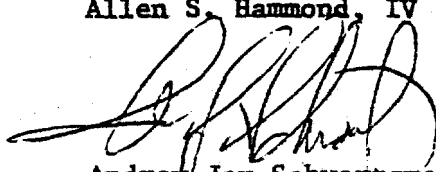
^{2/} See Opposition filed by Churches to the Petition to Intervene filed by Alan Shurberg and SBH at pp. 4 and 5, attached as Appendix A herein.

Wherefore, for the reasons stated above, Churches hereby respectfully petitions the Commission to deny the instant Petition filed by SBH in the above captioned proceeding.

Respectfully submitted,



Allen S. Hammond, IV



Andrew Jay Schwartzman
Media Access Project
1609 Connecticut Ave., N.W.
Washington, D.C. 20009
(202) 232-4300

Counsel for Churches

APPENDIX A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of

FAITH CENTER, Inc.
Station WHCT-TV
Hartford, Connecticut

For Renewal of License of
Station WHCT-TV

TO: The Honorable John M. Frysiak
Administrative Law Judge


RE: Errata to Opposition to Petition to Intervene

BC Docket No. 80-730
File No. BRCT-348

Dear Judge Frysiak:

On May 25, 1984, the Department of Communications of the Capital Region Conference of Churches, the Communications Management Team of the Christian Conference of Connecticut, and Sherman G. Tarr, (Churches), through their attorneys, the Media Access Project, filed their Opposition to the Petition to Intervene filed by Alan Shurberg and Shurberg Broadcasting of Hartford, Inc. By inadvertence two pages (now numbered 4 and 5) were omitted from the original pleading. Churches respectfully requests that the pages be included. A complete copy of the Opposition is attached.

Respectfully submitted,


Allen S. Hammond, IV

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of)

FAITH CENTER, Inc.)

Station WHCT-TV)

Hartford, Connecticut)

For Renewal of License of)

Station WHCT-TV)

BC Docket No. 80-730

File No. BRCT-348

TO: The Honorable John M. Frysiak
Administrative Law Judge

OPPOSITION TO PETITION TO INTERVENE

INTRODUCTION

The Department of Communications of the Capital Region Conference of Churches, the Communications Management Team of the Christian Conference of Connecticut, and Sherman G. Tarr, ^{1/} (Churches), through their attorneys, the Media Access Project, respectfully oppose the Petition for Leave to Intervene (Petition) filed on May 14, 1984 by Alan Shurberg (Shurberg) and Shurberg Broadcasting of Hartford, Inc. (SBH). Neither Shurberg nor SBH meet the requirements of 47 C.F.R. Section 1.223(b) of the Commission rules. They do not have a cognizable interest sufficient to justify standing in the above captioned proceeding. Nor would their participation assist the Judge or the Commission in fulfilling their obligation to serve the public interest.

^{1/} The original parties to the Petition to Intervene included Father Edmund S. Nadolny, Father Don Augusta, Father James Demetriades, the Reverend Joseph Zezzo, and the Reverend Mark Welch in addition to the parties named above. Father Edmund S. Nadolny no longer resides in the Hartford, Connecticut area. Each of the other parties still maintains an interest in this proceeding. However, for purposes of administrative convenience, only the names of the three parties identified above have been placed on this pleading. All the parties continue to represent the broad set of interests identified in the initial Petition to Deny Assignment Application filed June 13, 1980.

Accordingly, the judge should exercise his broad discretionary authority to deny intervention. Given the circumstances of this long-delayed proceeding and the availability of an alternative means of presenting information to the Judge under Section 1.225(b), the requested intervention is simply irrelevant to the public interest, even if the information Shurberg and SBH seek to present were deemed to be of value.

NEITHER SHURBERG NOR SBH HAVE THE REQUISITE STANDING

A. Shurberg

In the Petition, Shurberg alleges that he has standing as a result of his residency in Hartford and his interest in the operation of WHCT-TV. He cites the numerous pleadings he has filed over the past two years as proof of his interest. Petition, pp. 3-5. Churches does not dispute Shurberg's residency. However, Shurberg's true interests in this proceeding provide no justification for standing.

Until recently, Shurberg has solely relied upon his residency and espoused interest as a Hartford television viewer to secure standing to participate in the WHCT-TV license and distress sale proceedings. In doing so, he has relied upon Office of Communication of United Church of Christ v. FCC, 359 F.2d 994 (D.C. Cir. 1966) (UCC).^{2/} However, Shurberg's reliance on UCC is inappropriate because he is not a responsible representative of community interests in Hartford which have concerns about broadcast service. In UCC, the Court of Appeals conferred standing on responsible representatives of the

^{2/} See Reply to Opposition to Petition to Deny, in B.C. Docket No. 80-730, filed December 13, 1982, at pp. 5-7.

listening and viewing public in license renewal proceedings. However, the standing is predicated on a showing that the intervenor in fact represents collective concerns of at least part of the audience. The Commission was afforded power to protect against abuse by "persons (having)...no legitimate interest in the proceedings but with a desire only to delay the granting of a license for some private selfish reason." Id. at p. 1001. Rather, standing is based upon an assessment of the petitioner's usefulness relative to other petitioners, and the nature of the claims it asserts as the basis of standing. Id., at 1006. The Court also expressed an expectation that successful petitioners would be "spokesmen for...listeners...most directly concerned with and intimately affected by the performance of the licensee." Id., at p. 1002. And, that the petitioners would be composed of "groups...which concern themselves with a wide range of community problems and tend to be representatives of broad as distinguished from narrow interests." Id., at p. 1005.

A review of Shurberg's pleadings in this and related proceedings discloses that, unlike Churches, he has not asserted a substantive concern with Faith's program service. ^{3/} Yet it is Faith's disregard of its community of

^{3/} Among the procedural and technical objections raised by Shurberg in his petition to Deny filed on November 12, 1982, were: 1.) failure of Faith to provide notice of the proposed assignment to IMC in the local paper; 2.) the alleged inadequacy of IMC's EEO program; 3.) possible conflict in the management time IMC's principal would devote to running WHCT-TV; 4.) various alleged discrepancies in the financial qualifications of IMC and the agreement of sale between Faith and IMC; 5.) Faith's outstanding tax debt to Hartford and Avon, Connecticut. Later filings continued to stress the deficiencies in IMC's Application for Assignment, filed on October 1, 1982. They also alleged: 1.) that Faith was operating WHCT-TV without a license, (Request for Expeditious Action Regarding Unlicensed Operation of "WHCT-TV" by Faith Center, Inc. dated February 1, 1983); 2.) the existence of a law suit for breach of contract against IMC's principal (Emergency Motion for Dismissal) dated July 7, 1983); 3.) IMC engaged in misrepresentations before the Commission and the state of California regarding the limited participation of IMC's second stockholder (Motion for Dismissal filed October 5, 1983, and Reply, filed October 27, 1983). (footnote continued on following page)

of license through its programming which has most directly affected Hartford viewers. Further, Shurberg, unlike Churches, has demonstrated no history of concern for a wide range of community problems of Hartford. Nor has Shurberg even claimed to represent community institutional interests, voluntary associations, consumer concerns or anything except his own pecuniary desires. Shurberg's opposition to Faith's election to sell WHCT-TV via distress sale has been limited to narrow technical and procedural objections having little to do with the quality of service provided to Hartford.^{4/} Moreover, he initially pursued his private interests by cloaking them in the guise of public interest advocacy. Shurberg's formation of SBH and its subsequent attempt to tender an application for Channel 18 provide a stark contrast to the supposed public interest concerns Shurberg normally claims. When Shurberg's participation in this and other related proceedings is examined in light of his interest in SBH, it is clear that Shurberg has sought the removal of Faith and the disqualification of its proposed assignee simply so that Shurberg might acquire Channel 18. Thus, Shurberg's conduct constitutes the very abuse of standing which Congress and the Circuit Court in UCC sought to avoid by affording the Commission discretion to prohibit involvement by "persons having no legitimate interest..." Id., at p. 1001.

3/ (footnote continued from previous page)

The only reference to program service Churches found in the above pleadings was a statement by Shurberg "that (he) frequently watch(es) WHCT-TV and.... (is) a member of the listening audience." (Reply to Opposition to Petition to Deny, Exhibit C).

4/ By contrast, Churches meets all the criteria described. In this context, Churches has and will present technical and procedural objections such as those identified in footnote 3, as well as more broad concerns relating to quality of service and the suitability of applicants to meet the needs of Hartford.

Here, Shurberg seeks to continue his participation despite its limited usefulness and the inherent conflict in the interests he asserts. Churches therefore respectfully requests that the Judge deny Shurberg intervention in this proceeding, consistent with 47 U.S.C. § 309(d) and 47 C.F.R. § 1.223(b) of the Commission's rules. To do otherwise would not serve to advance this proceeding and would unjustly reward Shurberg for his prior and present obstruction of this and related proceedings in the furtherance of his private interests.

B. SBH

In the Petition, SBH alleges that it is "nothing more and nothing less than a competing applicant entitled to comparative consideration with Faith..." Petition, at p. 6. This is simply not so. Shurberg's tendered application has not been accepted to date, and he does not possess the claimed status. Churches also maintains that SBH is not a competing applicant and is not entitled to comparative consideration with Faith. Consequently, SBH has no interest and no standing.^{5/} To rule otherwise would allow any party who wished standing to challenge a broadcast licensee to merely tender an application for the same facility regardless of whether or not the application is properly filed.

SBH maintains that it has secured competitive status with Faith for the authority to operate Channel 18. It alleges that the status derives from the tender for filing of its December 2, 1983 application for authority to operate Channel 18. SBH asserts that its application was properly filed because: 1.) Faith's

^{5/} Were SBH truly a competing applicant, it would have filed a petition to intervene under 47 C.F.R. § 1.223(a) and would be accorded standing as a matter of right. SBH rightfully does not make such a claim.

license application was no longer in hearing status, 2.) the license was properly due to be filed again on December 1, 1983 along with all other applications for Connecticut broadcast licenses, 3.) no effort was made by either Faith or its proposed assignee to extend their operation of the facility past the alleged April 1, 1984 license expiration date, and 4.) the Bureau had not acted on the application for assignment of channel 18 from Faith to the proposed assignee prior to the tender of SBH's application for authority to operate channel 18.

SBH mischaracterizes the posture of the distress sale proceeding before the Commission and ignores the broad discretion which the Commission exercises in granting conditional renewals under 47 U.S.C. § 309(h).

Among the items which Faith requested in its Petition for Special Relief was the renewal of its license so that it might assign it pursuant to the distress sale policy. Petition for Special Relief filed September 29, 1982, BC Docket No. 80-730; at p. 3. Thus, when the entire petition was conditionally granted on September 30, 1983, the renewal was also conditionally granted. In this instance, the conditional grant was not a final disposition of the renewal application. Final disposition could not occur, and hearing status could not be avoided, until the conditions imposed by the Commission had been met.

The first condition was that Interstate Media Corporation be found to be a qualified licensee upon Bureau review of the Assignment Application. Second, the contemplated assignment had to be consummated within 90 days of the date of the grant. Memorandum Opinion and Order, FCC 83-448, released September 30, 1983. As the Presiding Judge is well aware, the Commission also indicated that, should either condition not be met, the proceeding (and hence, the license renewal application) would return to hearing status. As one of the conditions was not met, the application is again before the Judge.

More important for SBH, however, is the fact that because the renewal was conditioned upon succeeding events which had not occurred by December 2, 1983, and which failed to occur by March 1, 1984, its "competing" application was not properly before the Commission. See Chronicle Broadcasting Company, 44 FCC2d 717 (1974). Moreover, a contrary result would have rendered null any distress sale rights of minority purchasers, rights which both the Commission and the Courts have recognized. Stereo Broadcasting, Inc. v. FCC, 625 F.2d 1026 (D.C. Cir. 1981); Clarification of Distress Sale Policy, 44 RR2d 479 (1978). It follows, therefore, that SBH has no interest as a competing applicant. Consequently, it should not be allowed standing to participate in this proceeding.

THE EVIDENCE SHURBERG AND SBH PROPOSE TO
PROVIDE IS UNNECESSARY TO THE
DISPOSITION OF THE PROCEEDING

Churches maintain that the record in this proceeding, when supplemented by evidence provided by Churches, the only true public interest advocate in this proceeding, contains evidence of sufficient nature to support denial of Faith's renewal application or revocation of Faith's license, in the event there is no distress sale. Nearly all the evidence identified by Shurberg and SBH has already been placed before the Commission, the Judge and/or the Bureau. Thus, it may properly be considered as part of the existing record before the Judge. Moreover, in the unlikely event that evidence of the type alleged in Appendix A of the Petition is deemed necessary,^{6/}


^{6/} On April 11, 1984 SBH apparently filed a Petition for Institution of Inquiry (footnote continued on following page)

Shurberg (not SBH) may properly make such evidence available to the Judge pursuant to 47 C.F.R. Section 1.225(b) of the Commission's rules. Given the evident conflict of interest which surrounds Shurberg's participation, Section 1.225(b) is an appropriate means of gaining access to evidence without affording Shurberg new opportunities to abuse the Commission's processes for his own self interest.

Wherefore, for the reasons stated above, Churches hereby respectfully petitions the Judge to deny the Petition filed by Shurberg and SBH in the above-captioned proceeding.

Respectfully submitted,


Allen S. Hammond IV


Andrew Jay Schwartzman
Media Access Project
1609 Connecticut Ave., NW
Washington, DC 20009
(202) 232-4300
Counsel for Churches

May 25, 1984

6/ (footnote continued from previous page)

with the Commission (Inquiry Petition). The Inquiry Petition alleged, inter alia, that Faith and Dr. euGene Scott as well as other entities are engaged in the satellite assisted distribution of television programming to a number of broadcast stations. SBH maintains that the practice is contrary to Commission policy and law.

As a practical matter, SBH's request does not confer any rights upon SBH, as the Commission has absolute discretion to institute such an inquiry or decline same under 47 U.S.C. § 403. Moreover, SBH's allegation that Faith and Dr. Scott are operating a network within the meaning of the Commission's rules is wrong as a matter of law. See Christian Broadcasting Network, 87 FCC2d 45 (1981). Consequently, the allegations regarding the lack of network affiliate contracts at the stations to which the satellite feed is made are groundless.

CERTIFICATE OF SERVICE

I. Allen S. Hammond, IV hereby certify that a true and exact copy of the foregoing "Opposition to Petition for Extraordinary Relief" was served this 30th day of May, 1984, in the manner indicated, upon the following:

The Honorable John M. Frysiak
Administrative Law Judge
Federal Communications Commission
2000 L Street, NW
Room 238
Washington, DC 20554

(BY HAND)

Charles Dziedzic, Esq.
Chief, Hearing Division
Federal Communications Commission
Mass Media Bureau
2025 M Street, NW
Washington, DC 20554

(BY HAND)

Edward L. Masry, Esq.
15495 Ventura Boulevard
Sherman Oaks, California 94103

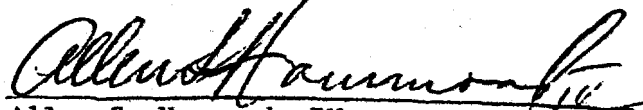
(BY MAIL)

Bruce Henderson, Esq.
Faith Center, Inc.
1615 South Glendale Avenue
Glendale, California 91205

(BY MAIL)

Harry F. Cole
Flood, Bechtel, Ward and Cole
1000 Potomac Street, NW
Suite 402
Washington, DC 20007

(BY MAIL)


Allen S. Hammond, IV